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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,705	09/23/2003	Raymond Pennino	30015790-0127	2212
26263	7590	02/24/2006	EXAMINER	
SONNENSCHN NATH & ROSENTHAL LLP P.O. BOX 061080 WACKER DRIVE STATION, SEARS TOWER CHICAGO, IL 60606-1080			ELKINS, GARY E	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/668,705		PENNINO, RAYMOND	
	<b>Examiner</b>		<b>Art Unit</b>	
	Gary E. Elkins		3727	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: on page 4, line 6, "A lesser of greater number" is grammatically unclear.

Appropriate correction is required.

### ***Claim Objections***

2. Applicant is advised that should claim 9 be found allowable, claim 10 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### ***Claim Rejections - 35 USC § 112***

3. Claims 1-7, 9-11 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 4, "a platform" is a double inclusion of an element, i.e. the platform was previously introduced in line 1.

In claim 14, "the wells" lacks antecedent basis in the claims. Only a single well was previously positively set forth in the claims.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 2, 4-7, 11, 12 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Hermann et al. With respect to claims 1, 2, 4-7, 11 and 17, Hermann et al discloses a carton including an internal platform 38, bottom 16-19, sidewall 11-14, wells 33 (at least one of which is between the platform and the sidewalls), top flap 21, side flaps 23, 24 and opposing platform legs supports 31, 32. With respect to claim 11, the carton of Hermann et al discloses an upper support 35 connecting the platform to the sidewall (also via the leg support 31) insofar as claimed. It is noted that no distinction is seen between the claimed carton and that shown in Hermann et al as a result of the claimed intended positioning of the bottom, side and top of the container. The carton of Hermann et al is considered capable of such intended positioning. With respect to claims 12 and 14-16, the carton of Hermann et al includes an internal platform 38, bottom 16-19, sidewall 11-14, well 33, leg supports 31, 32 and opposing feet 35, 36 folded from the leg supports insofar as claimed.

6. Claims 1, 2, 4-6, 9, 10, 12 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Hauser. Hauser discloses a carton including a platform 8, wells 30, top flap 2, leg supports 12, feet 13 and stabilizing support 7 or 9. At least one of the wells is located between the sidewall and the platform insofar a portion of the platform is located on the opposite side from a portion of the sidewall with the well therebetween.

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7. Claims 1, 2, 4-7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Kornfeld. Kornfeld discloses a carton including a platform 32, a well formed by infolded flaps 40, movable top flap 69, side flaps 70, a second well 22, leg supports 35 and a stabilizing support 34 as claimed. At least one of the wells (formed by the flaps 40) is located between the sidewall and the platform insofar a portion of the platform is located on the opposite side from a portion of the sidewall with the well therebetween.

8. Claims 1, 2 4-7, 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Woelk et al. Woelk et al discloses a carton including a platform 25, bottom 15-18 on either side in the position shown in the drawings, sidewall 11-14, wells between the platform and the sidewall, top flap 15 or 16 on the other side as shown in the drawings, side flaps 17, 18 and opposing platform legs supports 21 folded from side areas of the platform. It is noted that no distinction is seen between the claimed carton and that shown in Woelk et al as a result of the claimed intended positioning of the bottom, side and top of the container. The carton of Woelk et al is considered capable of such intended positioning.

9. Claims 1, 2, 5-7 and 9-11 rejected under 35 U.S.C. 102(b) as being anticipated by Daily. Daily discloses a carton including a platform 40, a well into which bottle B is placed, top flap 31, side flaps 27, 29, leg supports 42, 44 and a stabilizing support/upper support 39 as claimed.

10. Claims 1, 2, 5, 7 and 11-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Auclair (fig. 8 emb). Auclair discloses a carton including a platform formed by sections 246, 246a, a well formed between each section of the platform and portions of the sidewall, a bottle with a liquid preparation within the well, leg supports 244, 244a, feet 252, 254, upper support 248 and side flaps 220, 224.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1, 5-7 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berg in view of Daily or Tokunaga et al. Berg discloses all structure of the claimed carton except a liquid preparation as the content within the well (80). Each of Daily and Tokunaga et al teaches that it is known to package bottles with a liquid preparation therein. It would have been obvious to use the carton of Berg to package a bottle as taught by Daily or Tokunaga et al as a mere choice of what one wishes to package in the carton of Berg.

13. Claims 1, 4, 5, 7, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schnering in view of Daily or Tokunaga et al. Schnering discloses all structure of the claimed carton except a liquid preparation as the content within the well (80). Each of Daily and Tokunaga et al teaches that it is known to package bottles with a liquid preparation therein. It would have been obvious to use the carton of Schnering to package a bottle as taught by Daily or Tokunaga et al as a mere choice of what one wishes to package in the carton of Schnering. It is noted that the carton of Schnering is considered to include a movable top flap formed by the top panel or flap of the telescoping cover and, with respect to claim 7, opposing movable side flaps formed by the side flaps or panels of the telescoping cover insofar as claimed.

14. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Hermann et al, Hauser, Kornfeld, Woelk et al, Daily or Auclair, each in view of Tokunaga et al.

Each of Hermann et al, Hauser, Kornfeld, Woelk et al, Daily and Auclair evidences all structure of the claimed carton except formation of the carton from corrugated board. Tokunaga et al teaches that it is known to make cartons from corrugated board. It would have been obvious to make the carton in any one of Hermann et al, Hauser, Kornfeld, Woelk et al, Daily or Auclair from corrugated board as taught by Tokunaga et al to provide a stronger and/or more insulative container. Corrugated board is notoriously well known and used in this art.

15. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Kornfeld, Hauser or Auclair. Each of Kornfeld, Hauser and Auclair evidence all structure of the claimed carton except a packet on the platform. Official notice is taken that packets of, e.g. information about the contents, advertisements, coupons, etc. are commonly placed within cartons adjacent to the contents to deliver information and provide advertisement for a company to a consumer. It would have been obvious to place an information/advertising packet within the carton in any one of Kornfeld, Hauser or Auclair in view of the well known commercial practice of doing so in order to effectively deliver information and/or advertising to the consumer.

#### ***Response to Arguments***

16. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. The withdrawal of the indication of allowable subject matter in view of the newly applied prior art above is regretted.

#### ***Conclusion***

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (571)273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a

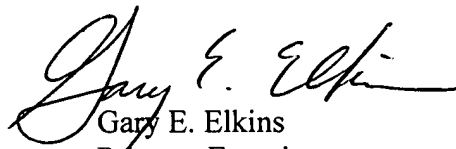
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fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

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Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday, Tuesday and Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.

  
Gary E. Elkins  
Primary Examiner  
Art Unit 3727

gee  
21 February 2006